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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,252	12/06/2001	Simon P. Parry	71493-998/jlo	4505
293	7590	02/25/2004	EXAMINER	
DOWELL & DOWELL PC SUITE 309 1215 JEFFERSON DAVIS HIGHWAY ARLINGTON, VA 22202			RAHLL, JERRY T	
			ART UNIT	PAPER NUMBER
			2874	

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/003,252	PARRY ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Jerry T Rahll	2874

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 and 16-21 is/are rejected.
- 7) Claim(s) 9-15 and 22-28 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 December 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. ____ .   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: ____ .                                   |

## DETAILED ACTION

### *Drawings*

1. The drawings submitted have been reviewed and determined to facilitate understanding of the invention. The drawings are accepted as submitted.

### *Specification*

2. The abstract of the disclosure is objected to because it exceeds the maximum length of 150 words. Correction is required. See MPEP § 608.01(b).

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-5, 8, 16-18 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,430,335 to Carberry et al.

5. Carberry et al. describes an optical switch having a controllable switch (16) and a controlling means (18), where the controllable switch is coupled to a first optical path (from 12a) and optically coupled to a termination of a second optical path (from 12b) and the controllable switch is controlled by the controlling means to enable, through transmission, and disable, through attenuation, optical coupling between the termination of the second optical path and the first optical path (see Figures 1-2 and Columns 2-3).

6. Further, Carberry et al. describes the controlling means receiving input of traffic information of the first optical path for controlling the controllable switch (see Col 2 Lns 64-65).

7. Further, Carberry et al. describes the controlling means using a software state variable which is externally modifiable (see Col 3 Lns 20-24).

8. Further, Carberry et al. describes the controlling means having a logic means (see Col 3 Lns 14-17).

9. Further, Carberry et al. describes the controlling means enabling optical coupling between the second and first optical paths when there is no data traffic on the first optical path and disables optical coupling between the second and first optical paths when there is data traffic on the first optical path.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 6-7 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carberry et al. as applied to claims 1 and 16 above, and further in view of U.S. Patent No. 5,337,377 to Yamada et al.

12. Carberry et al. describes an optical switch, as discussed above. Carberry et al. does not specifically describe the controllable switch coupled to the first optical path by a high optical power compatible connecting means.

13. Yamada et al. describes a switch coupled to an optical path by a high optical power compatible connecting means, namely a physical splice (see Columns 3 and Column 4 Lns 56-60).

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14. Carberry et al and Yamada et al. are analogous art because they are from the same field of endeavor of optical signal transmission. At the time of invention, it would have been obvious to one of ordinary skill in the art to use the connection of Yamada et al. with the switch of Carberry et al. The suggestion for doing so would be to reduce internal temperature rise, and the reflection losses associated, due to high power transmission (see Yamada et al. Col 1 Lns 5-10 and Col 4 Lns 35-40). Therefore, it would have been obvious to combine Yamada et al. with Carberry et al. to obtain the invention as specified in Claims 6-7 and 19-20.

***Allowable Subject Matter***

15. Claims 9-15 and 22-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. Claims 9-12, 15, 22-25 and 28 describe the controllable switch having a wavelength selective filter and a controllable optical signal blocker. Claims 13-14 and 26-27 describe the second optical path connected to optical test equipment. This is subject matter not described by the prior art of record.

***Inventorship***

17. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

***Conclusion***

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry T Rahll whose telephone number is (571) 272-2356. The examiner can normally be reached on M-F (8:00-5:30), with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jerry T Rahll



AKM ENAYETULLAH  
PRIMARY EXAMINER